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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No 391.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM POLLARD.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 15, 1869.

Filed Nov 1867

SUPREME COURT OF THE UNITED STATES.

No. 391.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM POLLARD.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the U. S. Court of Claims.

Petition.—Filed November 15, 1867.

WILLIAM POLLARD
vs.
THE UNITED STATES. } 2962.

The petition of William Pollard respectfully represents to this honorable court—

That your petitioner is a citizen of the United States, native of the city of Savannah, Georgia, and resident of said city, and by occupation a keeper of drays; that he is and ever has been true and loyal to the United States; that he has never at any time engaged in rebellion against the government of the United States, or voluntarily aided, abetted, or given encouragement to the rebellion against the national government.

Your petitioner states that previous to the occupation of the city of Savannah by the national forces, on the 21st of December, 1864, he was the lawful owner of sixty (60) bales of upland cotton, stored in his stable on Bryan street in said city, bearing the following marks, viz:



22 bales.



38 balss.

and weighing in the aggregate 30,623 pounds.

That in pursuance to a general order from the United States military authorities at Savannah, requiring all owners of cotton to furnish returns, the petitioner reported to Colonel Ransom, U. S. Army, agent of the government, the above-described cotton, giving in said return the marks and specifications as aforesaid.

Your petitioner further represents that said cotton was
2 taken possession of and removed by the United States authorities, and that the value of said sixty bales of upland cotton, weighing in the aggregate 30,623 pounds, when taken as aforesaid, was $27,560 70; and your petitioner asks the judgment of your honorable court for the said amount, less the lawful expenses, in accordance with the provisions of the 3d section of the act of Congress approved March 3d, 1863.

And your petitioner avers that he is the sole owner of this claim.

WILLIAM POLLARD,
By his attorney, J. B. STEWART.

STEWART, RIDDLE & LESKI, *Solicitors.*

I hereby declare on oath that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that I believe the facts as stated in said petition are true.

J. B. STEWART,
Attorney for William Pollard.

1 In the U. S. Court of Claims.

Petition.—Filed November 15, 1867.

WILLIAM POLLARD *vs.* THE UNITED STATES. } 2962.

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WILLIAM POLLARD,
By his attorney, J. B. STEWART.

STEWART, RIDDLE & LESKI, *Solicitors.*

I hereby declare on oath that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that I believe the facts as stated in said petition are true.

J. B. STEWART,
Attorney for William Pollard.

Subscribed and sworn to before me at Washington, D. C., this 18th day of July, 1867.

[L. S.]

JOHN F. CALLAN,
Notary Public.

3 In the United States Court of Claims.—December term, A. D. 1868.

WILLIAM POLLARD
vs.
THE UNITED STATES. } No. 2962.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of twenty-seven thousand five hundred and sixty dollars and seventy cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents, therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved M'ch 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the government, and for the better defence of the treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

4 In the Court of Claims.

WILLIAM POLLARD
vs.
THE UNITED STATES. } No. 2962.

And now, to wit, 26 of May, A. D. 1869, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said William Pollard, claimant, have and recover of and from the United States the sum of ten thousand and twenty dollars & no cents, ($\$10{,}020_{\frac{00}{100}}$.)

By the court.

5 In the Court of Claims.—Dec. term, 1868.

WILLIAM POLLARD
vs.
THE UNITED STATES. } No. 2962.

To the Court of Claims:

The defendants hereby make application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in this action on the 26th day of May, 1869, in favor of the claimant for the sum of ten thousand and twenty dollars, ($\$10{,}020_{\frac{00}{100}}$.)

Dated June 8, 1869.

ROBT. S. HALE,
Special Counsel for Treasury Dep't.
T. LYLE DICKEY,
Ass't Att'y Gen'l.

Filed in clerk's office June 8, 1869.

At chambers.

Let the appeal be allowed as prayed for in the case of Wm. Pollard vs. the U. S.

June 9, 1869.

JOS. CASEY,
Ch. J. C't of Claims.

6 In the Court of Claims.

WM. POLLARD
vs.
THE UNITED STATES. } 2962.

The finding of facts and the conclusions of law on said facts on which the court founded its opinion.

The claimant was a colored drayman in the city of Savannah, in the State of Georgia, possessed of property, real and personal, and of good credit and reputation in business. Between some time in November and December 12th, 1864, he purchased sixty bales of upland cotton of Messrs. Erwin & Hardee, then commission merchants and resident in Savannah. The cotton was delivered to the claimant on December 12th, 1864, and it was paid for in three instalments, and fully paid for by December 12th, 1864, or a day or two after.

After the capture of Savannah, on the 21st of December, 1864, upon an order made by the military authorities of the United States for the surrender of cotton, the claimant reported his cotton to them, and it was seized and afterwards sold by the United States, and its net proceeds, amounting to the sum of $10,020, paid into the treasury.

7 Messrs Erwin & Hardee, the vendors, resided in Savannah, and both were in the service of the confederate government in the rebellion. Mr. Erwin was a captain in the army, and left it in 1862, on account of his bad health. Mr. Hardee was deputy collector of the port of Savannah, under the confederate government, when the city was captured.

At the time of the sale, Gen. Sherman's army was approaching the South Atlantic coast, and it was expected that he would debouch about Beaufort, where preparations were making against him, while property was being brought into Savannah from other places for safety.

Previous to, and at the time of sale, Messrs. Erwin & Hardee were seeking to collect their debts by getting cotton from parties owing them, and selling it for cash. And as General Sherman approached, they, and other commission merchants, having cotton on hand and debts outstanding, pressed the sales of their cotton for confederate money wherewith to pay their debts, for which it was a legal tender. And at this time property rapidly changed hands. The claimant was loyal, aided Union prisoners and persons drafted into the rebel service to escape,

8 and never gave aid or comfort to the rebellion.

And on these facts it was decided as a conclusion of law that as the sale was bona fide it was immaterial that the vender was a rebel, or the seizure of the property by the United States imminent, though not contemplated by the parties.

And judgement was rendered for the petitioner for $10,020.

9 In the Court of Claims.

WILLIAM POLLARD *vs.* THE UNITED STATES. } No. 2962.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney General of the United States and of the special counsel of the Treasury Department for the allowance of an appeal, as filed in the clerk's office June 8, 1869, and of the order of the Chief Justice of said court at chambers, allowing the same, of the finding of facts and the conclusions of law on said facts, on which the majority of the court founded their judgment.

In testimony whereof, I have hereuto set my hand and affixed the seal of said court at Washington, this fourteenth day of December, A. D. 1869.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on record:) Court of Claims. No. 391. The United States, appellants, vs. William Pollard.

Filed 15th December, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*,
vs.
WILLIAM POLLARD. } No. 391.

On appeal from the Court of Claims.
Opinions delivered in the court below.

ROB: S. HALE,
Special Counsel for the United States.

LORING, J., delivered the opinion of the court:

The claimant was a colored drayman, in the city of Savannah, in the State of Georgia, possessed of property, real and personal, and of good credit and reputation in business. Between some time in November and December 12, 1864, he purchased sixty bales of upland cotton of Messrs. Erwin & Hardee, commission merchants. The cotton was delivered to the claimant on December 12, 1864, and it was paid for in three instalments, and fully paid for by December 12, 1864, or a day or two after.

After the capture of Savannah, on the 21st of December, 1864, upon an order made by the military authorities of the United States for the surrender of cotton, the claimant reported his cotton to them, and it was seized and afterwards sold by the United States, and its net proceeds, amounting to the sum of $10,020, paid into the Treasury.

Messrs. Erwin & Hardee, the vendors, resided in Savannah, and both were in the service of the confederate government in the rebellion. Mr. Erwin was a captain in the army, and left it in 1862, on account of his bad health. Mr. Har-

dee was deputy collector of the port of Savannah when the city was captured.

At the time of the sale, General Sherman's army was approaching the South Atlantic coast, and it was expected that he would debouch about Beaufort, where preparations were making against him, while property was being brought into Savannah from other places for safety.

Previous to and at the time of the sale, Messrs. Erwin & Hardee were seeking to collect their debts by getting cotton from parties owing them, and selling it for cash. And as General Sherman approached, they and other commission merchants having cotton on hand and debts outstanding, pressed the sales of their cotton for confederate money, wherewith to pay their debts, for which it was a legal tender. And at this time property rapidly changed hands. The claimant was loyal, aided Union prisoners and persons drafted into the rebel service to escape, and never gave aid or comfort to the rebellion.

It was claimed that the sale of the cotton was colorable, that is, as the allegation is understood, a mere pretence, leaving the ownership of the cotton in the vendors, and for their sakes covering it with the name of the claimant. But we think this is not proved, and that, on the other hand, the evidence is, that at the time of the sale the parties to it did not apprehend the capture of Savannah. Mr. Erwin, the vendor, on cross-examination, was asked: "Had you heard, at the time of the sale of this cotton to this claimant, that the United States military forces, under command of General Sherman, were advancing towards Savannah? *Ans.* I had at the time I made that sale the general impression in Savannah, which was that he would cut across from about Marion, and strike Beaufort; they were preparing at Beaufort, little thinking he would come here. Property was being run into Savannah from all quarters for safety."

Here Mr. Erwin testifies directly as to his belief about the capture of Savannah, and the fact he testifies to, that "property was being run into Savannah from all quarters for safety," shows the belief of the community and its neighborhood.

But apart from this, we think it is answer enough to say, that the sale between the claimant and Erwin & Hardee was *bona fide*, and made with the intent and effect of changing

the ownership of the cotton from them to him. Mr. Erwin's testimony is distinct, that the cotton was delivered to the claimant, and the full price of it paid by him to them. And the confirmatory fact is shown that the obtaining confederate money for cotton was at that time the general purpose of Erwin & Hardee, and that the latter of these partners carried eighty thousand dollars so obtained out of the city at its capture, to pay their creditors in the country. And on the other hand, it is equally clear, that it was desirable for the claimant to exchange his confederate money for cotton as a safer investment.

And if the sale was *bona fide* between the parties to it, and each acted for a plain advantage to himself, then that motive being shown, there is no reason or room for presuming that their motive was to defraud the United States; especially as the attempt would have been futile, for the United States, by seizing the cotton and proceeding against it under the act of 17th July, 1862, to judgment, would have avoided the sale whether colorable or *bona fide*. And the parties to the sale knew this, if they knew of the confiscation act, and if they did not know of that, they had no motive for a colorable sale.

And if it had been expected by the parties to this sale, *bona fide* between themselves, that the cotton would have been seized under the act of July 17, 1862, and claimed by the petitioner under the act of March 12, 1863, we think it would have been immaterial here, because the vendors and vendee were under no obligation to act for the United States, or to sacrifice to them their own business purposes, or to take care of the United States in any way; for the United States were able to take care of themselves, and had done so by the statute of July 17, 1862, which, as to them, avoided all sales of captured and condemned cotton made by rebel owners after September, 1862. And the United States, at the time of the sale of this cotton, had no lien upon it and no title to it. They might acquire a title by seizing the cotton and prosecuting it to judgment. And this was the right they had measured out for themselves; and it was the only liability to which the laws subjected the parties to the sale, and subject to this liability, of having their sales avoided in favor of the United States, they were perfectly free to trade with each other and buy and sell as their interests dictated, and whether

their dealing with each other was just before or after the capture of Savannah, was, we think, equally immaterial.

And so we think it is immaterial, the sale being *bona fide* between the parties, that the vendors were rebels; for the statute of July 17, 1862, does not forbid sales by rebels, or any business transactions between inhabitants of a rebel community. It only avoids sales, as against the United States, of cotton which has been seized and confiscated to the United States by judgment of court, and in this it follows the old law of treason, which carried the title of the Government back, by relation, to the act of treason, and avoided subsequent conveyances. And this is the policy of the statute of 17th July, 1862. But it is not the policy of the United States, as to captured or abandoned property, like this cotton, for against that they have not proceeded to judgment under the statute of 17th July, 1862, nor sought to avoid the sales made by rebel vendors, nor to defeat the title of loyal vendees, nor to appropriate the property to themselves. Because it was known that of the mass of captured and abandoned property seized, there was much of it which, at the time of its seizure, belonged to loyal owners, "the faithful few among the faithless found," whose titles would be avoided by proceedings under the statute. And to prevent this the act of 12th March, 1863, was enacted, which, in its purpose, character, and policy, is entirely different from the act of 1862; for the statute of 1862 is a penal statute, and its purpose is to punish rebels by the confiscation of their property. The statute of 12th March, 1863, is (in the best use of the word) a remedial statute, and its purpose is to do justice to loyal citizens by the restoration of their property. And to effect this purpose of the statute, and at the same time confine its bounty to the loyal citizens for whom it was made, all claimants are required to prove their own loyalty; that by the statute is material, and the loyalty of no other person is. The statute does not require the claimant to prove the loyalty of his vendor, nor make that material. And this court cannot impose on the claimant's recovery a condition which the statute does not.

Nor does the statute of June 25, 1868, alter the statute of March 12, 1863. The statute of 1868 enacts that, where in any suit the loyalty of a person shall be "*material*," (and that necessarily means is made material by statute,) that in

such case, it shall be proved affirmatively by the party asserting it. That, in this court, applies only to claimants, and as to them had been adjudged here before it was enacted.

Where the sale is *bona fide* between the parties to it, it cannot be a fraud against any of the statutes cited. None is possible by the vendee against the statute of July 17, 1862, for that founds the title of the United States on the treason of the vendor, which is antecedent to the sale, and that is defeated by the statute, irrespective of the vendee, and equally whether he is loyal or disloyal, honest or dishonest. And if the sale is *bona fide* between the parties to it, and vests the ownership of the property in the vendee, it cannot be a fraud against the statute of March 12, 1863, for that only requires the claimant to prove a title good against third persons, that is, others than the United States, and a *bona fide* sale, vesting the ownership in the vendee, does exactly that; and, as has been said before, this court cannot require of the claimant anything more than the statute does. The United States do not ask nor authorize this court to ascertain whether the title of the claimant is good against them; for it cannot be, but only that it is such as will protect them against other claimants. And as the statute does not require *bona fide* vendees to sacrifice their opportunities for profit to the United States, nor to forbear advantageous purchases on the approach of their armies, and does not impute it to them as a fraud or a fault, that they sought their own advantage in markets deranged by war, this court cannot do so.

It may be possible that a citizen, shown to be loyal, and neither wishing cotton for any purposes of his own or to cover it for a vendor, may yet buy cotton merely to prevent its coming into the possession of the United States, but such a remote possibility has not as yet been shown in evidence here, and it is not a ground for the construction of a statute, "*ad ea quæ frequentius accedunt, jura adaptantur.*"

And on the whole case, we decide, as conclusions of law—

That where it is proved that a sale was *bona fide* between the parties to it, and made with the intent and effect of transferring the ownership for the price, it is immaterial that the vendor was a rebel, or that the capture of the property and its seizure by the United States was imminent, and known to be so by the parties of the sale.

That where the sale was colorable, and made to cover the

property of the nominal vendor by the apparent ownership of the nominal vendee, it is fraudulent and void; and the vendee cannot recover the net proceeds of the property in this court, for want of title in himself.

On the facts stated, the court find that the claimant is entitled to judgment for the net proceeds of sixty bales of upland cotton, amounting to the sum of $10,020.

CASEY, Ch. J., concurring:

I agree that the claimant is entitled to judgement. I dissent from the construction given to the statutes.

NOTT, J., dissenting:

If the facts in this case were like those in Grossmayer's case, (*ante, p.* 1,) I should not feel at liberty to dissent again upon the point there determined, for a point of law properly decided by a court is the law of the land until properly overruled, and as such is obligatory not only upon citizens and suitors, but equally upon the judges and officers of the court.

The difference between this case and Grossmayer's is, that there the claimant gave no evidence whatever as to the loyal or disloyal character of those from whom he bought his cotton, and, in fact, did not himself know; while here it appears positively that the vendors from whom the claimant bought, and with whom he dealt, were disloyal persons, and had been, the one an officer in the rebel military service, and the other the confederate cotton agent in Savannah.

With regard to the construction given to the "*confiscation*" and "*Abandoned or captured property acts*," I fully agree that a claimant in this court seeking the proceeds of captured property, has but to prove three things—ownership, a right to the proceeds, and his own loyalty; but as to what constitutes "ownership" under those statutes, and as to the construction given to those statutes on the requisites of "ownership," I dissent, upon the following grounds:

1st. The "*Abandoned or captured property act*" removed from the jurisdiction of the district courts all cases relating to abandoned or captured property; so that this court pos-

sesses, respecting them, an exclusive jurisdiction, and it would be absolutely impossible for the Government to libel the property and proceed to judgment under the "*confiscation act.*" Allowing a suit here for the proceeds of the property, and requiring a suit there for the forfeiture of the property, would be a circuity of action and double vexation never intended by the later act.

2d. The "*Abandoned or captured property act*" not only substitutes another remedy for that given by the "*confiscation act,*" but entirely reverses the positions and rights of the parties. Under the earlier act the proceedings were instituted by the Government, and were against the property; under the later, the Government acquires possession of the property, and the suit must be maintained by the owner against the Government. Under the former act, the property remained till condemnation in the custody of the court; under the latter, the property vested in the Government, and the owner has but an equity in the proceeds. The legal title followed possession, and passed without condemnation by the capture. The burden of proving a superior equity in, and a better right to, the proceeds, is expressly thrown upon the claimant.

3d. The "*Abandoned or captured property act*" may be a remedial statute, and may be liberally construed; and yet is not to be held to work the repeal of other statutes by implication, nor to enable guilty parties to escape the penalties which the existing law imposed. Certainly it is not a remedial statute enacted after the events were over and the condition of parties fixed. Hence, our construction must relate back to the time when it was enacted, which was before the rebellion was half over, and but a few months after the "*confiscation act*" had been enacted. Hence, it was a prospective statute, and not merely remedial, and its framers could never have intended that it should thenceforth allow parties whose property was liable to confiscation to evade the penalty by a sale to their loyal neighbors. Such a construction must also involve this anomaly as a part of the legislative intent: that if A, a loyal person, should buy property of B, a rebel, and it should not be captured, then at the end of the rebellion it should be liable to confiscation, and the sale and transfer be deemed void; but if it should be captured, then A should be deemed to have a good title, and the sale and transfer from

B be held valid. Such could not have been the legislative intent. If the act was intended to be remedial, it was intended to be remedial for property already owned, and not for property thereafter to be bought from public enemies, and in violation of the unrepealed "*confiscation act.*"

4th. The "*Abandoned or captured property act*" does not require or imply a construction at variance with the previous statute. It does not say that the claimant shall prove possession, but that he shall prove "*ownership.*" Possession is not "ownership;" it is but evidence, whence the law, in some cases, implies the right of possession. But against one holding lawfully, prior possession is not evidence of superior title. In this case the defendants show title to the proceeds by the capture of the property,* and the claimant shows title by a prior transfer from a public enemy, which law and public policy declared absolutely void. Shall the latter title prevail because the statute under which we are proceeding has changed the tribunal having jurisdiction, or cast the burden of proof upon the claimant instead of upon the defendants? As this case now stands, we must hold to support a recovery that Congress, midway in the rebellion, enacted, that thereafter it should be lawful for a rebel officer, then voluntarily bearing arms against the United States, to sell his property while the army of the United States might be actually marching to capture it; and that he who thus bought should acquire a title which should defeat any the United States might acquire by capture; and, finally, that actual capture and possession of the property by the United States, instead of enuring to their benefit in any way, would only tend to defeat their right to confiscate it, and practically make valid a transfer that would otherwise be declared void.

I also dissent from the rule laid down that the legality of the sale depends upon the honest intent of the parties. The rule which I think should prevail is, that where the capture was imminent, and the vendor disloyal, and both these facts known to the vendee, there the sale was a fraud on the act, and the law will impute fraud to the parties, whatever might have been the motive or intent.

* In Cote's case, (3 C. Cls. R., p. 64,) this court held that "captured property, after the capture is complete by twenty-four hours undisturbed possession, or by being carried into a place of safety, is divested from the owner and becomes vested in the captor;" and also, that "under the captured and abandoned property act," the title of the United States is made complete and indefeasible."

Supreme Court of the United States.

No. 391.

THE UNITED STATES, Appellants,

vs.

WILLIAM POLLARD.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

11

Supreme Court of the United States.

No. 391.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM POLLARD.

APPEAL FROM THE COURT OF CLAIMS.

THE CASE.

On the 15th of November, 1867, Wm. Pollard filed his petition in the Court of Claims for the proceeds of sixty bales of cotton, taken possession of by the United States on the capture of Savannah, alleging ownership, loyalty, &c.

The United States denied the petition generally, and specially the loyalty of the claimant. Alleged that the suit was not commenced within two years after the suppression of the rebellion; that the claimant was an alien; that he could not recover under the act of July 27, 1868, &c.

FINDINGS OF THE COURT OF CLAIMS.

That the claimant, a colored drayman of Savannah, a man of substance and character, was notoriously loyal to the United States. That shortly before December 12, 1864, he purchased the cotton from Erwin & Hardee, at Savannah, the domicil of the parties. That Erwin & Hardee were open rebels. That property from other parts was then seeking safety at Savannah, under a general belief that Sherman would not approach that city, which was captured after this sale. That Erwin & Hardee were selling off all property for

confederate money for the purpose of paying their debts, and that this was made as an ordinary sale for such money.

THE COURT HELD

That the sale was *bona fide*. That the claimant was the loyal owner, and rendered judgment for the proceeds of the cotton.

APPELLANT PRESENTS TWO PROPOSITIONS.

The suit was not commenced within two years after the suppression of the rebellion. The sale from Ewin & Hardee was void.

POINTS FOR APPELLEE.

I.

The first, although made by plea, was not brought to the notice of the court below, and cannot be considered here.

Bell *vs.* Brum, 1 How., 169.
Brockett *vs.* Brockett, 3 How., 692.
West *vs.* Smith, 8 How., 402.
United States *vs.* Larkin, 18 How., 557.

The suit was commenced within the two years, to wit, November 15, 1867.

The third section of the act of March 12, 1863, provides that "any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims," &c.

12 Stats., 820.

To enable a claimant to avail himself of this act, ample time, the quiet of peace, and protection of law were requisite. The proscribed Union owner must return to his domicil, hunt up the last traces of his property, be advised of his rights, look up the evidence, procure means, secure counsel, and commence his suit.

When may he enter upon this labor? The time will depend upon an event. That event, the suppression of the rebellion. How is he to know when that has occurred? Till then the Court of Claims is closed to him.

It will be borne in mind that the application of an ordinary limitation to a given case will depend upon something incident to the cause of action, while this limitation is wholly independent of all the things that can pertain to any of the claims. It dates from some wholly independent fact or thing, and runs the prescribed time, and the claimant must look outside of his demand to ascertain the date of its commencement and the conditions of its application. It must be, then, some publicly ascertained and proclaimed event, known to all, and about which no mistake can be made.

As it is to ascertain the rights of a mass of the citizens scattered over a wide extent, its ascertainment should be equal to a proclamation, or the enactment and approval of a general law.

The suppression of the rebellion, it is submitted, is that return to a condition when, in the absence of coercive force, the people of all the rebellious districts submit to law. Of that condition the courts cannot take notice; nor would it be in the power of suitors to make adequate proof of it.

Hence, it has been wisely concluded, that this event is to be ascertained and announced by those branches of the Government charged with the duty of suppressing the rebellion.

Prize Cases, 2 Black, 635.

Adm. of Duckett *vs.* C. F. Ins. Co., 17 Am. L. Reg., 673.

Att'y Gen's Op. Weaver's case.

The conclusion of a foreign war by treaty is announced by proclamation. The proclamation of the President of August 20, 1866, has this announcement of the suppression of the rebellion—

"And I do further proclaim that the said insurrection is at an end, and that peace, order, tranquillity, and civil au-

thority now exist in and throughout the whole of the United States of America."

14 Stats., 814.

A declaration ratified and affirmed by Congress by its solemn legislative act of March 2, 1867.

14 Stats., 422, sec. 2.

II.

It is claimed that no title passed from Erwin & Hardee to the claimant, by reason of the fifth section of the confiscation act of July 17, 1862.

12 Stats., 591.

That section subjects the property of the rebel to seizure, invalidates its sale, and renders him incompetent to maintain an action for its protection—outlaws him. It does not divest him of title to property and vest it in the United States; that could only be done by seizure and judicial condemnation.

This section seems to spend its force in holding rebel property liable to seizure, and when so seized it has the further effect of annulling all sales of it occurring between the acts of rebellion and the act of seizure; and if never seized then there can be no occasion to avoid a sale.

To say that this act by its mere force destroyed the transferability of all property in the rebel States, and placed it beyond the protection of law—stripped of all character of property—would be to reduce these communities to a state of lawless violence.

That statute was not the law of this sale, and was not in force at the domicil of the parties till the capture of Savannah, after the sale. As the sale was not made in aid of the Confederate Government, it is valid.

The United States *vs.* Rice, 4 Wheat., 233.

Flemming *vs.* Page, 9 How., 614.

Texas *vs.* White, 7 Wall., 700.

Thorington *vs.* Smith, 17 Am. L. Reg., 739.

McKee's case, (not reported,) does not conflict with this view, fairly considered.

THE ACT OF MARCH 12, 1863.

The act of July 17, 1862, though not repealed, is in effect made obsolete by that of March 12, 1863.

The President is no longer to seize *rebel* property for confiscation.

All property in the rebel States has become *enemies'* property; and, by a vast and comprehensive system, his agents will convert all that is captured and abandoned into cash for the use of the United States.

This was the end of confiscation proper, and the inauguration of that most sweeping confiscation improper, and without reference to the quality of the owners.

The provision which permitted the *loyal* owner to reclaim the proceeds of his property in the Court of Claims, excluded all others, and the United States thus executed a penalty, and filled its exchequer without process of law, due, or otherwise.

When we recover the capacity to blush, we may color at the mention of this.

The sole conditions of a reclamation under this act are ownership and loyalty.

The appellee fulfilled both; and from the judgment of the Court of Claims deciding these points in his favor, the United States does not appeal. But it insists upon another condition, found in no law, that he shall show that his title from its source to him was loyal, with no bar sinister.

The United States claims that the confiscation act is in force against him, and although his property was never seized, and although that act only permits the disloyalty of an owner to be plead in bar of *his* action to recover, yet it is insisted that the penalty of treason shall be extended by construction to bar this recovery by this loyal owner.

THE LOYAL CLAIMANTS.

The judgment contended for by the United States would be a fitting termination of the wrongs visited upon these

suitors. Unable to protect them, the Government to which they were true, left them for four years to the spoil and plunder of the common enemy.

In the day of victory, it came not to them with protection and indemnity. It refused to distinguish them from the rebels. It herded them with the common guilty multitude, and plundered all with alacrity and impartiality.

Congress closed its own doors to them, turned the key of the Treasury upon the proceeds of their despoiled property, and sent them impoverished and ignorant to the Court of Claims. There it met them with the statutory declaration, that as they came from rebel States, they were to be presumed to be rebels themselves. It closed their mouths as witnesses, so that they should neither explain or deny; and thus bound and gagged, they were permitted to hunt for the residue of their stolen goods, diminished by the costs and charges of the spoliation.

Indeed, they were not permitted; for the United States pursued them there and insisted that they should not have their money even on those terms, and failing in that virtuous endeavor to defeat them there, they appeal to this high tribunal, and insist that the Supreme Court of the United States shall become accessory after the fact, to this national plundering.

It is submitted that under any rule that can be applied to this case, the judgment of the court below must be affirmed.

A. G. Riddle,
For the Appellee.

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Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 389.

EDWARD FORDHAM, APPELLEE,

vs.

THE UNITED STATES, APPELLANT.

BRIEF FOR APPELLEE.

Appeal from the Court of Claims.

THOS. WILSON,
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Judd & Detweiler, Printers, Corner Penn. Avenue and 11th street.

Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 389.

EDWARD FORDHAM, APPELLEE.

vs.

THE UNITED STATES, APPELLANT.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

This is one of the cotton cases appealed by the United States from the Court of Claims, and in accordance with the leave granted by the Court, I file this brief for consideration with the causes advanced and now for argument.

I.

As to the title of the plaintiff acquired by purchase in the confederacy during hostilities.

1. Every loyal person residing in the confederate States during the rebellion had a right to live. Every such person had a right to labor that he might live. If, by such labor, he acquired property he has the right to be protected in that property. The United States had no authority to pass any law abridging his right to live, to labor, or to acquire property, so long as he did no act in opposition to his Government.

Cotton, so long as it is put to no unlawful or treasonable use, is to be regarded and protected the same as any other property.

2. It is in time of war the province, as it is the duty, of the armed forces in permanent occupancy of a given territory to provide a government and laws for that people.

Halleck on Int. Law, pp. 776-7, 830.
United States *vs.* Rice, 4 Wheat, 247.
Cross *vs.* Harrison, 16 How., 193.

And such laws and the acts of the citizens and residents done in accordance therewith are legal, valid, and binding.

So held when done by those *in opposition* to the United States.

Lutensdorfer *vs.* Webb, 20 How., 186.
United States *vs.* Rice, 4 Wheat, 247.
Thorington *vs.* Smith, United States Supreme Court, Dec. Tr., 1868.

When done *by the United States.*

Fleming *vs.* Page, 9 How., 614.
Rutledge *vs.* Fogg, 3 Cold., 554.
Isbell *vs.* Farris, 5 Id., 426.
Hefferman *vs.* Porter, Sup. Ct. Tenn., 9 Amer. Law Reg., N. S., 41.
Reiter *vs.* the United States, 4 Amer. Law Reg., N. S., 534.

But the binding force and effect of such laws and acts does not extend to those enacted or done in aid of treason or rebellion. It does extend to those laws passed for the prevention of crime or the regulation of business between man and man, and contracts or purchases made under them are valid and binding.

White *vs.* Texas, 7 Wall., 700.
Thorington *vs.* Smith, Supra.
Hickman *vs.* Betts, U. S. Sup. Ct., MSS., Dec. Tr., 1869.

Shortridge *vs.* Mason, 1 Amer. Law Rev., 95.
Kippell's Admr. *vs.* P. R. R. Co., 3 Id., 389.

From these authorities it is apparent that purchases of personal property made by loyal persons residing within the confederate lines during the existence of the war, and in accordance with confederate laws, are to be sustained and upheld, so far as they were in the common business intercourse between man and man, and not in aid of the rebellion.

Filor *vs.* the United States, U. S. Supreme Court, MSS. Op. by Justice Field.

II.

The prohibition of the act of July 17, 1862, *does not affect purchases and sales made between persons, both of whom were at the time under confederate rule and governed by confederate laws.*

1. A person cannot be held to be governed at the same time by two distinct laws, each one contrary to the other. No man can serve two masters.

2. The act of July 17, 1862, provides a specific mode of seizure of the property of certain specified individuals, and a specific mode of condemnation, the chiefest of which is that there shall be a trial by jury, (the United States *vs.* Bank of Louisiana; Joshua Morris, agent, MSS. Op. Sup. Ct., Dec. T., 1868,) and that the property shall not be condemned unless its owner shall be found to be guilty of treason; that is, shall be found to be one of the classes of persons specified in that act. If there be no such trial, or if one, there be no such finding, the property must be released, and cannot be condemned. If the United States rests its defence to the recovery sought in this action upon this act alone, the judgment must be for a return of the property, for there is no pretence that any of the requirements of that act, looking towards a condemnation of the property, have been fulfilled.

3. The act of July 17, 1862, in so far as it authorizes the seizure, condemnation, and sale of property by proceedings *in rem*, upon the theory of the treason of its owner, without first giving to him a hearing and trial, is unconstitutional and void. (See argument of Judge Curtis and Mr. Cushing in Garnett *vs.* the United States and McVeigh *vs.* United States, United States Supreme Court, on January 31, 1870.)

4. The act of March 12, 1863, provides an entire different programme, which has been adopted, and, subject to many irregularities and abuses, has been followed by the United States, and it is bound thereby. In so far as they are in conflict, the latter repeals the former.

III.

The United States had no legal authority to make the seizure of this property, sell the same, and place the proceeds in the Treasury, thus working a virtual confiscation thereof, without any trial, condemnation, or proceeding against it or its owner.

1. If the confederate States were never out of the Union, and the citizens always owed their allegiance to the United States Government, the constitutional provision is a protection to at least the loyal portion, of whom these appellees are part. It provides, "No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

If the confederate States were never out of the Union, those who engaged in rebellion are to be tried and punished as traitors; and this in the manner pointed out by the Constitution.

2. If the confederate States were out of the Union, and the war was a civil war, with all the concomitants of a foreign war, then I say that by the laws of war private property on land is not subject to capture except for temporary use by the captor, for his pressing necessities, or to prevent its falling into the hands of and use by the enemy.

3. On the capture of Savannah, December 25, 1864, and Charleston, February 18, 1865, no one will pretend that any necessity existed to seize the *private property of loyal* (or disloyal) *persons* residing there, to prevent its falling into the hands of the enemy; and still less necessity for the use by the capturing army of 33,000 bales of cotton at the one and 6,000 bales at the other city. The care of so much cotton was a detriment to the capturing army. It took an army of men and a fleet of ships to guard and transport it. It was shipped north and sold, and so could not have been needed for use. After the occupation of the cities became permanent—and this became so within twenty-four hours after their occupation—all rights of capture *jure belli* ceased; and on this point I cite the Venice, 2 Wall., 273.

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